LIBRARY
SUPREME COURT, U. S.

(36657)

Office Supreme Court, U.S.
FILED
JAN 27 19
JOHN F. DAVIS, CLERK

IN THE

# Supreme Court of the United States

**October Term, 1961**

**No. 670**

ASSOCIATION FOR THE PRESERVATION OF FREEDOM OF CHOICE, INC. and CHARLES P. MONG,

*Petitioners,*

*versus*

JAMES M. POWER, THOMAS MACLEE, DENNIS J. MAHON; and JOHN R. CREWS, constituting the New York City Board of Elections, ABRAHAM D. BEAME, GEORGE J. BALBACH, MICHAEL KOWIT, JAMES J. McFADDEN, J. RAYMOND JONES, ARLEIGH B. WILLIAMSON, EDWARD K. DUDLEY, PAUL T. O'KEEFE ALICE SACHS, LLOYD E. DICKENS, MICHAEL BLOOM, ROSE MARY FAY, ANGELO SIMONETTI, FLORENCE M. FERGUSON, ANTONIO MENDEZ,

*Respondents.*

**On Petition for Writ of Certiorari to the Court of Appeals of the State of New York**

## BRIEF IN OPPOSITION FOR RESPONDENTS CONSTITUTING THE NEW YORK CITY BOARD OF ELECTIONS

LEO A. LARKIN,
*Attorney for Respondents Constituting the New York City Board of Elections,*
Municipal Building,
New York 7, New York.

SEYMOUR B. QUEL,
ALFRED WEINSTEIN,
*of Counsel.*

# INDEX


| | PAGE |
|---|---|
| JURISDICTION | 1 |
| QUESTION PRESENTED | 1 |
| LEGISLATION INVOLVED | 2 |
| STATEMENT | 6 |
| ARGUMENT | 9 |
| POINT I—Since the general election, as well as the primary, has been held, this proceeding is moot | 9 |
| POINT II—Equal participation in party activity being assured to all, there is no denial of equal protection | 11 |
| CONCLUSION | 12 |


## CITATIONS

***Cases:***


| | |
|---|---|
| Cook v. Fortson, 329 U. S. 675 (1946) | 9 |
| Creedon, Matter of, 264 N. Y. 40 (1934) | 10 |
| Giles v. Harris, 189 U. S. 475 (1903) | 9 |
| People ex rel. Hirsch v. Wood, 148 N. Y. 142 (1895) | 10 |
| Kooperstein v. Power, Matter of, 153 N. Y. Supp. (2d) 908 (1956), aff'd 2 A D 2d 655, aff'd 1 N Y 2d 868 | 12 |

| | PAGE |
|---|---|
| McGuiness v. DeSapio, Matter of, 9 A D 2d 65 (1959), lv. app. den. 7 N Y 2d 708 | 10 |
| Madden, Matter of, 148 N. Y. 136 (1895) | 10 |
| Mills v. Green, 159 U. S. 651 (1895) | 9, 10 |
| Reich v. Bosco, 21 Misc 2d 973, aff'd 9 A D 2d 919 (1959) | 10 |
| Terry v. Adams, 345 U. S. 461 (1953) | 11 |
| Theofel v. Butler, 134 Misc. 259 (1929) | 12 |


***Statutes:***


| | |
|---|---|
| N. Y. Civil Practice Act, 588, subd. 7(a) | 10 |
| N. Y. Election Law, 135, 136, 270 | 7 |

## Jurisdiction

The order of the New York Court of Appeals was entered on October 5, 1961. On December 11, 1961, respondents received by mail copies of the instant petition, but they have not yet received the notice required by Rule 21 (2). The United States Law Week, issue of January 23, 1962, indicates that filing was not completed until January 17, 1962. This would seem to be too late under Rule 22 (3) and 28 USC 2101 (c).

## Question Presented

If this proceeding has not been rendered moot by events which occurred after its commencement, the question it presents may be stated as follows:

Where political party enrollment is equally available to all voters, and all those enrolled may participate equally in the choice of nominees, is the Equal Protection clause violated when the election system permits any voter to base his choice upon discriminatory motives?

Messrs. Jack, Brown, Dickens and Dudley are all, of course, Negroes, there being a strict clause in the New York City Charter providing that the Borough President of Manhattan must, whatever else he is, be black. They say the ACLU is preparing a complaint to the Federal Civil Rights Commission on the ground that this clause discriminates unfairly against Jews and Puerto Ricans.

## Mrs. Borough President

In a day of revolt against precedent, a revolt as reckless as it is surprising, the New York County Republican organization has designated not only a woman as its candidate for Borough President of Manhattan, but also a woman who happens to be white and furthermore is a Protestant. She is Mrs. Lawrence, now serving her second term in the Assembly from a district on the upper East Side. She came to New York nearly thirty years ago, and has been a Republican leader of the Eighth Assembly District since 1943, doing a STANDARD

CITES DUAL STANDARD

Manhattan: Liberals have strange views. Apparently, segregation is bad in the South, but proper in Manhattan where only a Negro can be Borough President.

C. C. ...olitical office, ...ere coming to New ...

The Manhattan Republicans apparently feel that once an office, such as the Borough Presidency, is occupied by a Negro there is no irrevocable mandate that it continue so by right of inherited succession in perpetuity. In designating a white Protestant, when the prevailing political custom in ticket-balancing by all parties is to confine the field almost wholly to Irish Catholics, Italian Catholics and Jews, they really threw away the clubhouse rule book. It is a daring innovation. We believe the voters, whether they elect Mrs. Lawrence or not, are ahead of the political leaders in their willingness to look for competence first, and disregard religion, race, color and even sex as irrelevant and immaterial.

by a Pro... could ever be named ... previously held by a white.

Whenever there is discrimination favoring one race, religion or color, there exists simultaneously and automatically discrimination against some other race, religion or color. Nothing that Mr. Jack has done constitutes a reason why a Negro should not be considered for his or any other office. The color of a man's skin should not be a qualification or disqualification for public office. That is, the meaning of equal opportunity.

ORK TIMES,

# Dickens Said to Be in Lead For Borough Presidency

By LEO EGAN

Assemblyman Lloyd Everett Dickens of Harlem took a big lead last night in the race for the unexpired term of Hulan E. Jack for Borough President of Manhattan. The post will be filled today at a meeting of Manhattan's six own City Councilmen with Mayor ce... Vagner at City Hall.

The selection of Mr. Dickens would represent a major political setback for Mayor Wagner and his campaign to oust Carmine G. De Sapio as the New York County Democratic leader. If chosen, Mr. Dickens would owe his election to help he received from Mr. De Sapio. The Tammany leader is reported to have persuaded two of the four Democratic Councilmen to vote for him.

By backing a candidate acceptable to Negro district leaders in Harlem, Mr. De Sapio appeared to be strengthening his own position as county leader.

The Harlem group represents three of the sixteen votes in the county executive committee. If the anti-De Sapio faction were able to add these votes four, it would have al... to unseat the ...

# rk Time...

## 5 in Harlem Pre... Attempt to Choo... Jack's Successo...

By PETER KIHSS

Harlem's five Negro Democratic district leaders met again last night in an attempt to agree on a candidate for Borough President of Manhattan.

CKENS IN LEAD TO REPLACE JACK

Dickens Leads in Race for Jack's Post, Page 1, Col. 3

Justice Edward R. Dudley. Both are Negroes.

The anti-De Sapio group, of Democratic district leaders with whom Mr. Wagner has been meeting, were reported declining to express any preference for Borough President.

Their attitude indicated they would oppose, in this year's Democratic primary, the nomination of whoever is c... Manhattan Cou... succeed Mr. Jack.

Bo... ocratic... said, he ... of an "o... Democrat ... post, left v... cing of Hul... flict-of-inter...

Former En...

Before being ... bench by Mayor ... Mr. Dudley ser... States Minister t... executive assistant ... ernor of the Virgin...

Like Mr. Jack, bot... ley and Assemblyman ... Dickens, the only oth... date who figured in the ... ing, are Negroes resi... Harlem.

both ... Adam ... sentative ... for renominat... when Mr. De Sap... Jr. for renomination ... when Mr. De Sapio ... Councilman Brown to r... Democratic primary ...

Acceptable to Powell

Representative Powell liste... Mr. Dickens on Jan. 8 as o... of three candidates accepta... to him. The two others h... Civil Service Commis... George Gregory Jr. and ... Corrections Commissioner ... spoken ...

sion since Dudley had filled an elective post he could not properly be classified as an "employee"—and hence the anti-discrimination clause, invoked by the Association for the Preservation of Freedom of Choice, was inapplicable. And never mind that Dudley had not in fact been elected to the Borough Presidency but selected to fill the job by five men who had looked for their candidate only among the Negro community.

APFC promptly appealed the SCAD decision to the Supreme Court of the State of New York, New York County, and had the rare good luck of pleading before Judge Henry Epstein, a Stal[illegible]ite of Liberalism who not long ago [illegible]amco was guilty under New [illegible]ory practices in d[illegible]oyees to work [illegible] Arabia—which refuses [illegible]s. (Presumably Aramco should [illegible]n with bayonets.) Judge Epstein upheld the SCAD decision, but in the course of pleading, found himself arguing that while it is bad (and in New York State unlawful) for private enterprise to [illegible]n grounds of race, [illegible]olic officials to do so.

[illegible]ment of school boundaries and [illegible]in the transfer of pupils.

[illegible]in fact, if truth be [illegible]by the logical rout[illegible]—Mr. Alfred Avins [illegible]ave now taken their [illegible]hard-[illegible]ngs.

## Bias Charged In Naming Dudley

A lawyer charged today that Mayor Robert F. Wagner had been in fear of the political consequences of choosing someone other than a Negro as president of the Borough of Manhattan, and that the Mayor induced Manhattan city councilman to select Edward R. Dudley, a Negro, for the job.

Alfred Avins, lawyer for the Assn. for the Preservation of Freedom of Choice, Inc., brought action in Supreme Court, charging the appointment was a violation of the state anti-discrimination law. Justice Henry Epstein took the matter under reservation.

**and trial Riss**

selection of Edward R. Dudley as Manhattan Borough President.

The suit was brought in Brown, who is a Negro, Daniel S. Weiss, and Louis Okin, all Democrats, and Stanley M. Isaacs, R., Lib.

## Mayor Named in Bias Suit

**A Federal court suit was filed today against Mayor Wagner and four Councilmen charging racial discrimination in the choice of Edward K. Dudley for Manhattan Borough President. The civil suit was filed by the Association for the Prevention of Freedom of Choice, Inc., and P. Mong, a Manhattan Democrat.**

ALBA
Federal
dicted
Co. emp
used the
company
tioned it
U. S.
honzy s
company

## GROUP SUES WAGNER ON CHOICE OF DUDLEY

The Association for the Preservation of Freedom of Choice, Inc., filed suit yesterday in Federal Court to void the selection of Edward R. Dudley as Borough President of Manhattan.

The suit accused Mayor Wagner and four City Councilmen of discrimination in the selection of Mr. Dudley, adding that at no time was any candidate other than a Negro considered to replace Hulan Jack, who forfeited his office upon conviction of accepting gratuities.

The other defendants named were Councilmen Daniel S. Weiss, Louis Okin, Earl Brown, and Stanley M. Isaacs.

Similar actions by the association before the New York State Commission Against Discrimination and state Supreme Court were dismissed.

In addition to the association, the action in Federal Court was also brought by Charles P. Mong, who indictated he would be eligible for the office of Borough President. Mr. Mong, who lives at 175 East Eighty-ninth Street, is a television repair man, according to the lawyers who filed the suit.

WHAT THE A.P.F.C. IS DOING ABOUT DISCRIMINATION:

## Equal Rights for Office

A suit has been filed in Federal Court to void the election of Edward R. Dudley as Borough President of Manhattan. It accuses Mayor Wagner and four City Councilmen of discrimination, on the ground that at no time was any candidate other than a Negro considered to replace Hulan Jack, also a Negro.

It was pretty obvious, when a successor to Mr. Jack was being sought that no white man had a serious chance of getting the office. But this was only one instance of discrimination that is commonly and flagrantly evident, in both major political parties, in designating candidates. Every "balanced" ticket is a product of discrimination by contriving the distribution of public offices according to race and religion, rather than by an impartial appraisal of competence.

Does anyone assume for a moment that the Republican and Democratic tickets for city-wide office this year were completed without regard for race or religion? Was it accident that put a Jew, an Irish Catholic and an Italian Catholic in the top three places of the Republican ticket, and a German-Irish Catholic, a Jew and an Italian Catholic on the Democratic ticket? Is it happenstance that creates an exact balance of three faiths on the Board of Education and the Board of Higher Education? Is it chance that almost completely excludes white Protestants from judicial positions in some areas, in a discrimination *for* Catholics and Jews?

We hope and believe the ordinary voter is becoming disgusted with this disgraceful quota system, of something for everybody—well, almost everybody, some being more equal than others. Sooner or later it will be dropped by the political parties, in favor of nondiscriminatory search for merit and merit only. The sooner the better.

THE
e New York Times
ADOLPH S. OCHS, Publisher 1896-1935
EVERY DAY IN THE YEAR BY THE NEW YORK TIMES COMPAN

## Legislation Involved

In addition to the Equal Protection clause there is involved the Election Law of the State of New York. It provides (McKinney's Consolidated Laws of New York, Book 17):

"2. Definitions

* * *

"5. The term 'nomination' means the selection in accordance with the provisions of this chapter of a candidate for an office authorized to be filled at an election at which official ballots are used.

"6. The term 'designation' means any method in accordance with the provisions of this chapter by which candidates for party nomination, or for election to party position, may be named for the purposes of any primary election.

* * *

"173 * * * the board shall deliver to him [a voter] an enrollment blank. * * * The voter * * * may make * * * a * * * mark * * * underneath the emblem of the party of his election; * * *

"186 * * * the names of the party designated by each voter * * * shall be entered by the board, opposite the name of such voter in the register * * *

"201 * * * A person shall not be allowed to vote the ballot of a party at a primary election * * * unless his enrollment with such party appears * * *

"114 * * * The designation of a candidate for party nomination at a primary election or for election to party position thereat shall be by petition * * *

"135. * * *

"2. Each sheet of such a petition, except as herein otherwise provided, shall be in substantially the following form:

"I, the undersigned, do hereby state that I am a duly enrolled voter of the party, and entitled to vote at the next primary election of such party, that my place of residence is truly stated opposite my signature hereto, and that I intend to support at the ensuing primary and I do hereby designate the following named person (or persons) as a candidate (or as candidates) for nomination of such party for public office (or public offices) or for election to party position (or party positions) of such party to be voted for at the primary election to be held on the day of , 19 , as hereinafter specified.

| Names of candidates | Public office or party position | Place of residence (also post office address, if not identical) |
|---|---|---|

"I do hereby appoint (here insert the names and addresses of at least three persons, all of whom shall be enrolled voters of said party) as a committee to fill vacancies in accordance with the provisions of the election law.

"In witness whereof, I have hereunto set my hand the day and year placed opposite my signature.

| Date | Name of signer | Residence | Ward (except in the city of New York) | Election district | Town of city (except in the city of New York) | Assembly district (only in the city of New York or in the town of Hempstead) |
|---|---|---|---|---|---|---|
| | | | | | | |

State of New York }
County of } ss.:

"On the dates above indicated, before me personally came each of the voters whose signatures appear on the petition sheet, to me personally known, who, being by me duly sworn, each for himself, said that the foregoing statement made and subscribed by him was true.

"(Signature and official title of the officer authorized to take affidavits.)

"3. In lieu of such authentication there may be appended at the bottom of each sheet, a signed statement of a witness, who is a duly qualified voter of the state and an enrolled voter of the same political party as the voters qualified to sign the petition, and who is also a resident of the same political unit in which the

office or position is to be voted for, (however, in the case of a petition for election to the party position of member of the county committee, residence in the same assembly district shall be sufficient) as to the subscription thereof. Such statement shall be accepted for all purposes as the equivalent of an affidavit, and if false shall subject the witness to the same penalties as if he had been duly sworn. The form of such statement shall be substantially as follows:

STATEMENT OF WITNESS

"I, (Name of witness) state: I am a duly qualified voter of the state of New York; an enrolled voter of the party and now reside in the (fill in number) election district of the (fill in Assembly district, if in New York City, ward in any other city, or town, if outside city) in the city, town or village of , in the county of , in such state, at (fill in street and house number and postoffice) therein. I was last registered for the general election in the year from (fill in street and house number and postoffice) in the (fill in city, town or village) in the county of , in such state. The said residence was then in the (fill in number) election district of the (fill in Assembly district, if in New York City, ward in any other city, or town, if outside city). I know each of the voters whose names are subscribed to this petition sheet containing (fill in number) signatures and each of them subscribed the same in my presence and upon so subscribing declared to me that the foregoing statement, made and subscribed by him, was true.

Signature of witness.

Date.

"§136 * * *

2. A petition must be signed * * * by not less than five percentum * * * of the enrolled voters of the party residing within the political unit * * * provided * * * that for the following public offices the number of signatures need not exceed the following limits:

(a) for any office to be filled by all the voters of the City of New York, five thousand signatures;

(b) for any office to be filled by all the voters of any county or borough within the City of New York, two thousand five hundred signatures; * * *

* * *

"§270 * * * The candidate receiving the highest number of votes for nomination for a public office * * * shall be the nominee of his party for such office * * * * "

## Statement

Petitioner Mong is an enrolled Democrat who was eligible to vote in the September 1961 primary election of the Democratic nominees for candidacy for the New York City offices of Comptroller and President of the Borough of Manhattan. He "might have been designated to run for said offices" but for the discrimination of which complaint is made. Mong is neither a Negro nor a Jew (2).*

It is not clear in what sense petitioners use the term "designated" in the several paragraphs of their pleading.

* Unless otherwise indicated, numerals in parentheses refer to paragraphs of the petition with which this proceeding was initiated in the Supreme Court of New York. References to the petition for certiorari are herein made to its page numbers as follows: "(Pet. p. )".

They may intend it to mean "nominated", as the first and second paragraphs of the petition might indicate. They may intend it to have the statutory meaning imparted by the Election Law. Or they may intend that it convey the sense of having been announced as the person whom someone will support in an effort to achieve the required designations (in the statutory sense) and nomination thereafter. This last meaning is indicated by the use of the term in paragraphs 4-8, inclusive.

Only an individual enrolled voter can make a designation, in the statutory sense, of the kind here involved. Election Law, §135. If enough designations of someone are obtained, the designee's name will appear on the primary ballot. Election Law, §136. Nomination is achieved by attainment of a plurality in the primary election. Election Law, §270.

Last July, one Robert F. Wagner, a Democrat who was Mayor of New York City, announced his support of respondents Beame and Dudley, respectively, a Jew and a Negro, for nomination to the offices, respectively, of Comptroller of New York City and Borough President of Manhattan, and he "designated" them as persons to be supported by his supporters. Based on this announcement, supporters of the Mayor for re-election, including office holders and organized groups, announced their similar support, urged enrolled Democrats to sign petitions for such respondents [i.e., to "designate" them, in the statutory sense] and to vote for them, and they obtained signatures. All such activity was motivated by the desire to have the "Wagner ticket" put in "balance" by placing thereon a Jew and a Negro (4).

An executive committee of the regular Democratic organization in New York County (Borough of Manhattan), popularly called Tammany Hall, which committee consists of persons elected by enrolled Democrats, has, by rule or usage, been "selecting" persons to be primary candidates for borough positions. The selectees usually "run on the regular organization line with other regular organization candidates" for nominations (5). Such persons are usually supported by regular party workers, and in consequence thereof such persons usually obtain enough designations to place them on the primary ballot and enough support in the primary to obtain the nomination. The electorate of the Borough of Manhattan usually elects Democratic candidates (6).

In July 1961 the members of the Tammany committee announced the choice of respondent Dickens, a Negro, as "designee" for the nomination for Borough President. Based on such choice, sundry politically active Democrats urged enrolled Democrats to sign petitions for Dickens, obtained signatures, and urged his nomination. All of the foregoing acts were motivated by the desire to "balance" the "regular organization ticket" and to obtain the support of politicians and voters who were Negroes (8).

It is alleged that the process by which the executive committee "designates Democratic nominees" is "an integral part of the process of electing public officials in New York County, and Borough of Manhattan, and in so designating officials, the said executive committee members exercise power delegated by New York State" (7).

Petitioners filed objections based on the above grounds with respondent Election Board members. The Board was either going to reject the objections or fail to take timely action thereon (10).

The instant petition, at page 8, refers to a circular attached to the appendix. It is apparent from the last unnumbered page thereof that for the office of Borough President, a third person, in addition to respondents Dudley and Dickens, received enough designations to run in the Democratic primary. It is also apparent that such third person was designated on a non-discriminatory basis satisfactory to petitioners.

## POINT I

### Since the general election, as well as the primary, has been held, this proceeding is moot.

The primary election has been held, and the general election too, as is virtually admitted (Pet., p. 8) and as this Court may judicially notice. Accordingly, this proceeding, addressed to the primary designations, is moot. *Mills v. Green*, 159 U. S. 651 (1895). *Cook v. Portson*, 329 U. S. 675 (1946); *cf. Giles v. Harris*, 189 U. S. 475 (1903).

We do not, here, argue that petitioners' grievance does not survive, but subsequent events raise issues, regarding the validity of the elections, which are not within the scope of this proceeding. It may be that the designees were nevertheless properly placed on the primary ticket because they were designated by a sufficient number of voters, who were not motivated by considerations of a ticket balanced

on racial or religious bases. Also, the general election involved the whole Democratic ticket, and others than respondents here are concerned. *Cf. Mills* v. *Green*, 159 U. S. 651, 656-657 (1895).

Moreover, jurisdiction of the Supreme Court of New York is limited in election cases. There is doubt that a general election may be annulled in a proceeding such as this. *Cf. Matter of McGuiness* v. *DeSapio*, 9 A D 2d 65, at 73, and cases there cited (1st Dept., 1959) lv. app. den., 7 N Y 2d 708; *Reich* v. *Bosco*, 21 Misc 2d 973, at 979, and cases there cited, aff'd 9 A D 2d 919 (2d Dept., 1959), even if it be assumed that there is any New York judicial power in any case to accomplish a disfranchisement by the annulment of a general election. See *Matter of Creedon*, 264 N. Y. 40, 43 (1934). At least, there may be matters involving judicial discretion, for the indications are that such annulment would be most gravely regarded. See *People ex rel. Hirsch* v. *Wood*, 148 N. Y. 142, 146-147 (1895).

The New York Court of Appeals has not indicated an attitude inconsistent with our position here or with its earlier expressed positions regarding moot appeals in election cases. See *Matter of Madden*, 148 N. Y. 136, at 139 (1895). Petitioners here had sought leave to appeal to that Court. Their motion was denied (10 N Y 2d 705), not dismissed, on the same day that Court dismissed the appeal they had taken as of right on constitutional grounds under N. Y. Civil Practice Act, 588, subd. 1 (a). That Court's dispositions of the matter indicate its position that the constitutional question was not only not "substantial", but also that it was not "directly" involved. The latter po-

sition may well be attributable to the awareness that, the primary elections having been held, there were other issues affecting its validity or that there were procedural obstacles to its annulment in this proceeding. In any event, the Court of Appeals made its decision before the general election was held.

## POINT II

**Equal participation in party activity being assured to all, there is no denial of equal protection.**

This is not a situation such as those involved in *Terry v. Adams*, 345 U. S. 461 (1953), and its predecessor cases, where discrimination was a built-in feature of the electoral process. In those cases party organization was a mechanism of exclusion, with membership limited to white people or with Negroes excluded from the primaries.

In New York any voter may enroll as a Democrat (or as a member of any other party). Any enrolled voter may sign a designating petition, and he may later vote in the primary. There is no restriction at any stage which does not apply to all. We do not think that because the State prescribes the machinery of designation and nomination, a voter's choice of whom he will support is State action, so long as that choice is unfettered by any unequal condition imposed or sanctioned by the State.

But even if such a choice were, somehow, to be deemed State action, no discrimination is involved where individual choice is not dictated, and the number of persons who may make one and express it by political action is not limited

by any condition which does not apply to all. Stated somewhat differently, there was nothing to prevent Mong himself from obtaining the designations required for a place on the primary ballot and the plurality of votes to make him the nominee.

Paragraph 7 of the petition is a conclusion of law, and it is inaccurate. Not committees but only individuals can make designations of the kind here involved, as the Election Law provides. See *Theofel v. Butler*, 134 Misc. 259, 264 (1929); *Matter of Kooperstein v. Power*, 153 N. Y. Supp. (2d) 908, at 910 (1956, no official citation), aff'd 2 A D 2d 655, aff'd 1 N Y 2d 868. Assuming the conclusion were correct, it would be immaterial. There is no unequal restriction upon voters who choose committee members or limitation upon the choice made by the latter.

## CONCLUSION

**The petition should be denied.**

January 25, 1962.

Respectfully submitted,

LEO A. LARKIN,
*Attorney for Respondents Constituting the New York City Board of Elections.*

SEYMOUR B. QUEL,
ALFRED WEINSTEIN,
*Of Counsel.*